

FEDERAL COURT OF AUSTRALIA

Anam v Minister for Immigration and Border Protection [2016] FCA 1022

Appeal from:	Application for extension of time: <i>Anam v Minister for Immigration and Anor</i> [2016] FCCA 388
File number(s):	NSD 438 of 2016
Judge(s):	SIOPIS J
Date of judgment:	5 August 2016
Date of hearing:	5 August 2016
Registry:	New South Wales
Division:	General Division
National Practice Area:	Administrative and Constitutional Law and Human Rights
Category:	No Catchwords
Number of paragraphs:	23
Counsel for the Applicant:	The Applicant appeared in person.
Counsel for the First Respondent:	Ms N Blake
Solicitor for the First Respondent:	Clayton Utz

ORDERS

NSD 438 of 2016

BETWEEN: **MD KHAIRUL ANAM**
 Applicant

AND: **MINISTER FOR IMMIGRATION AND BORDER**
 PROTECTION
 First Respondent

ADMINISTRATIVE APPEALS TRIBUNAL
Second Respondent

JUDGE: **SIOPIS J**

DATE OF ORDER: **5 AUGUST 2016**

THE COURT ORDERS THAT:

1. 1. The application is dismissed.
2. 2. The applicant is to pay the costs of the first respondent to be fixed at \$4,800.00.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

SIOPIS J:

1 This is an application for an extension of time to appeal against the orders of the Federal Circuit Court of Australia which dismissed the applicant's application for judicial review of a decision of the Migration Review Tribunal (the Tribunal). The Tribunal affirmed the decision of a delegate of the first respondent to refuse the applicant's application for a student visa.

2 The delegate refused the student visa on the grounds that the applicant had failed to satisfy, at the time of the decision, Public Interest Criterion 4020 (PIC 4020) and so had not satisfied cl 572.224(a) of Sch 4 to the *Migration Regulations 1994* (Cth) (the Regulations). PIC 4020(1) relevantly provided as follows:

(1) There is no evidence before the Minister that the applicant has given, or caused to be given, to the Minister, an officer, the Migration Review Tribunal, a relevant assessing authority or a Medical Officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to:

- (a) the application for the visa; or
- (b) a visa that the applicant held in the period of 12 months before the application was made.

3 At the time that the delegate and the Tribunal made their respective decisions, reg 1.03 of the Regulations provided that the term "bogus document" had the same meaning as in s 97 of the *Migration Act 1958* (Cth), which provided:

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly.

4 The relevant facts are that the applicant provided to the Department of Immigration and Border Protection (the department) a bank statement dated 5 December 2012 purporting to reflect the entries and balances in his father's bank account from a bank in Bangladesh.

The document was provided in support of the applicant's student visa application to show that the applicant had sufficient funds to support himself during his intended stay in Australia.

5 5 The department carried out an integrity check which reported that there was a serious discrepancy between the balances reflected in the bank statement provided by the applicant and the actual funds available in the bank account in question.

6 6 Before the delegate, the applicant said that there had been a mistake in the spelling of his father's name on the bank statement and also the bank account number on the bank statement, which his father had not noticed before the applicant provided the bank statement to the department. The applicant submitted to the delegate another bank statement which was in his father's name and had a different account number, but from the same bank. However, the transactions recorded in both the bank statements were identical.

7 7 The delegate found that the falsity in the information related not to the name on the bank statement of 5 December 2012 but to the discrepancy between the amounts recorded in the bank statement and the actual funds available in the bank account. The delegate went on to find that the bank statement dated 5 December 2012 was a bogus document.

THE TRIBUNAL

8 8 The Tribunal affirmed the decision of the delegate.

9 9 The Tribunal observed that the transactions and balances in the two bank statements provided by the applicant to the delegate were identical; and, this, said the Tribunal, caused it to have concerns that both the documents were fraudulent.

10 10 The Tribunal observed that the applicant had not addressed the question of the discrepancy between the amount recorded in the bank statement of 5 December 2012 and the evidence of advice from the bank in Bangladesh to departmental officers that the amount that was actually available in that bank account was substantially less than the amount which was reflected in the bank statement.

11 11 The Tribunal said it placed weight on the evidence of the departmental integrity check and found that the bank statement dated 5 December 2012 which the applicant had provided to the department in support of his student visa application, was a bogus document by reference to s 97(b) of the *Migration Act*.

12 Accordingly, the Tribunal found that the applicant had not met PIC 4020(1), by reason of having provided the department with a bogus document. The Tribunal also observed that PIC 4020(1) applied whether or not the bogus document was provided knowingly or unwittingly.

13 The Tribunal also considered whether PIC 4020 should be waived, but it was not satisfied that there were any compelling or compassionate circumstances as would justify the waiver of PIC 4020.

THE FEDERAL CIRCUIT COURT

14 The Federal Circuit Court judge considered the three grounds of review of the Tribunal's decision relied upon by the applicant; and rejected each of them. The first ground of review complained that the Tribunal should have found that the 5 December 2012 bank statement was probably genuine and that there had been no intention to mislead.

15 The primary judge found that, on the evidence comprising the departmental integrity check and the applicant's evidence of the history of the 5 December 2012 bank statement, it was open to the Tribunal to find that the document was a bogus document. The primary judge went on to dismiss the challenge to the finding on the intention to mislead as an invitation to undertake an impermissible merits review.

16 The second ground of review alleged that there was no evidence upon which to base the finding that the 5 December 2012 bank statement was a bogus document. The primary judge dismissed this ground saying that the evidence of the departmental integrity check was capable of supporting that finding.

17 The third ground of review was that it was unreasonable for the Tribunal to find that the bank statement of 5 December 2012 was a purposely untrue document. The primary judge dismissed this ground of review on the same basis, namely, that the evidence of the departmental integrity check and the fact that both bank statements contained identical entries and balances could support the findings of the Tribunal.

THE APPLICATION TO THIS COURT

18 The applicant was slightly late in filing his application in that he filed the application five days out of time.

19 19 The applicant handed up in Court today a draft notice of appeal. That draft notice of appeal does no more than allege that the primary judge erred in rejecting each of the grounds of review. In respect of each ground of review, the applicant repeats the same particulars set out in the grounds of review as were before the primary judge. Accordingly, the applicant has not by reference to the primary judge's reasons, identified any specific ground upon which it is alleged the primary judge has erred.

20 20 In my view, the primary judge did not err. The grounds of review, in one way or another, complained of the Tribunal's finding that the 5 December 2012 bank statement was a bogus document. In my view, the evidence before the Tribunal which the primary judge identified, was capable of supporting the Tribunal's finding. Further, as the Tribunal noted, PIC 4020(1) will not be satisfied, whether or not the applicant has knowingly or unwittingly provided a bogus document.

21 21 The delay in filing the application for an extension of time to appeal was not such as would in itself cause the Court to refuse to extend time. However, for the reasons given, the applicant has failed to demonstrate there is a sufficiently arguable case that the primary judge erred to warrant an extension of time to appeal.

22 22 I observe that, during the hearing, the applicant complained that he did not have a lawyer. However, in my view, the applicant had sufficient time before the hearing to have engaged a lawyer. The fact that the applicant did not do so, is not a sufficient basis upon which to adjourn this application which has been listed for some time.

23 23 In those circumstances, the applicant's application for an extension of time within which to appeal is dismissed.

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I certify that the preceding twenty-three (23) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Siopis.

Associate

Dated: 23 August 2016